IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Case No. WPMB No. 912 of 2004
Subhash Chandra Mehrotra & others ----------Petitioners
Vs.
State of Uttaranchal through
Registrar Co-operative Societies & others ----------Respondents.

Date of decision: 27-09-04

For the Approval of:

Hon'ble Mr. Justice P.C. Verma,

Hon'ble Mr. Justice B.C. Verma,

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporter be allowed to see the judgment? (Yes)

COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)W. P. (M/B) No. 912 of 2004

1. Subhash Chandra Mehrotra
   S/O Hardasi Lal Mehrotra,
   R/O Village Khadakpur Devipur,
   Block Kashipur, Member Kashipur (South)
   Kisan Seva Sahakari Samiti Ltd.
   Udham Singh Nagar,
2. Afsar Ali, S/O Pir Baksh,
   R/O Village Sumsain, Block Bazpur,
   District Udham Singh Nagar.

… **Petitioners.**

Versus

1. State of Uttaranchal through
   Registrar Co-operative Societies
   Uttaranchal.
2. District Assistant Registrar/P.A.
   Co-operative Societies,
   Uttaranchal

… **Respondents.**

(2)W. P. (M/B) No. 899 of 2004

1. Suresh Chand Sarkar S/O Sudhir Chand Sarkar,
   R/O Village Taigor Nagar, P.O. Shaktifarm,
   District Udham Singh Nagar.

… **Petitioner.**

Versus

1. State of Uttaranchal, through Secretary
   Co-operative Societies, Co-operative
   Building, Uttaranchal Govt. Dehradun.
2. District Assistant Registrar/Prescribed Authority,
   Co-operative Societies, Udham Singh Nagar,
3. Managing Director, Shaktifarm, Kishan
   Sewa Sahkari Samiti Ltd. Shaktifarm,
   District Udham Singh Nagar.

… **Respondents.**

(3)W. P. (M/B) No. 903 of 2004

1. Manvinder Singh Khera S/O Lakhvir Singh,
   R/o Vill-Dah Farm, Tehsil Khatima,
   P.O. Majhola Sugar Factory,

District Udham Singh Nagar.
2. Balbant Singh, S/O Late Sri Pritam Singh,
R/O village Bangama, P.O. Majhola
Sugar Factory, Tahsil Khatima,
District Udham Singh Nagar.
3. Het Ram S/O Sri Merai Lal,
R/O Village Sarpura, Khatima,
District Udham Singh Nagar.

… **Petitioners.**

Versus

1. State of Uttaranchal, through Secretary Co-Operative Societies, Cooperative Building, Uttaranchal Govt. Dehradun.
2. District Assistant Registrar/Prescribed Authority, Co-operative Societies, Udham Singh Nagar, Uttaranchal
3. Managing Director, Majhola Dirghakar Bahuudesiya Sahkari Samiti Ltd. Kanchapuri Khatima, District Udham Singh Nagar.

… **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

(Per Hon'ble B.S.Verma, J.)

By means of these Writ Petitions, the petitioners have challenged the elections scheduled to be held of the Committee of Management of the Co-operative Societies in the State of Uttaranchal under the mandamus of this Court and have prayed for quashing the list published in the news paper "Amar Ujala" dated 2-9-2007 containing details of constituencies/area of 34 cooperative societies of Udham Singh Nagar being illegal and contrary to the provisions of the U.P. Co-operative Societies 1965 and the Rules farmed there-under as well Uttaranchal Co-operative Societies Act, 2003 and its relevant Rules, 2004.

We have heard learned counsel for the petitioners, Sri S.K.Mandal, as well as learned counsel for the State-respondents Sri U.K.Uniyal, Addl. Advocate General, and perused the record.

In compliance of the mandamus issued by this Court Notification for holding of Elections has been notified. The grievance of the petitioners is that the prescribed procedure relating to required period for holding of election as per Rules has not been adhered to and sufficient time was not granted to file objections to the petitioners relating to delimitation. Further contention of the petitioners is that delimitation of the constituency has been done without giving opportunity to the petitioners.

It is admitted to the petitioners that the elections which are subject-matter of these writ petitions are scheduled to be held on 30-09-2004 and 01-102004. The only point for consideration before us is whether it is permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution on the matters connected with election during the process of election. The Apex Court has elaborately dealt with such a case in the case of ***N.P. Ponnuswami V. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. And others" (A.I.R. (39) 1952, Supreme Court, 64).*** In that case, in para 7, the meaning of the word "election" was dealt and it was observed that ***"The word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate of the legislature. The use of the expression "conduct of elections" in Art. 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in part XV including Art. 329(b). The term "election" may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll. It is not used in a narrow sense."***

While dealing Articles 329 (b) and 226 of the Constitution of India, the Apex Court in para 9 has observed as follows:-

> ***"The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means on an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court."***

The Apex Court has further held that ***"Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to the time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted."***

In an another case, ***"Nanhoo Mal and others V. Hira Mal and others" (AIR, 1975 Supreme Court 2140),*** election process was in progress and election to the office of the President of the Municipal Board, Soron in Etah district of Uttar Pradesh was to take place on 1st October 1974. Writ Petition under Article 226 of the Constitution challenging the validity of the procedure adopted by the District Magistrate for holding the election with a prayer for an order to the District Magistrate not to hold the election on 1st October, 1974 was filed. The election programme had been notified in the Gazette dated 24-9-194. In the said case, the Apex Court has observed that ***"the election to the office of the President of the Municipal Board could be challenged only according to the procedure prescribed by the U.P. Municipalities Act and that is by means of an election petition presented in accordance with the provisions of the Act and in no other way. An election petition is***

to be presented after the election is over and there is no remedy provided at any intermediate stage."

In yet another case ***"The Election Commission of India Vs. Shivaji and others" (AIR 1988 Supreme Court 61),*** while dealing the provisions of Articles 327, 329 (b) and 226 of the Constitution, it was held by the Apex Court that ***"in view of the non obstante clause contained in Art. 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Art. 226 of the Constitution is taken away."***

Thus, in view of the decisions of the Apex Court in the aforesaid cases, it is settled law that two attacks on matters connected with elections, one under Article 226 during the process of election and the other when it is completed by election petition are not permissible and that all disputes arising out of elections should be postponed till after the elections are over by means of an election petition. The jurisdiction of the Courts with regard to the matters arising between the commencement of the polling and the final election has been ousted. It will, therefore, not be just and proper to entertain these writ petitions at the intermediate stage of Co-operative Societies Elections scheduled to be held on 30th September and 1st October, 2004.

The next contention raised on behalf of the petitioners is that there are certain irregularities in the voters' list. Undisputedly, the election of the members of the Committee of Management of Co-operative Societies of Udham Singh Nagar is scheduled to be held on 30th September and 1st October, 2004. Nothing has been shown to us on behalf of the petitioners, so as to warrant any interference with the impugned declaration dated 2-09-2004 at this stage of election process. All these three petitions are liable to be dismissed.

The petitions are dismissed in-limine. Stay order, if any, is vacated.

27-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP